



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 28, 1998

Ms. Mary Andrews
Director of Civil Service
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR98-2313

Dear Ms. Andrews:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 118167.

The City of Lubbock (the "city") received an open records request for the following categories of information:

1. The applications, resumes, credit information, test scores, and all other selection criteria used for acceptance to the Lubbock Police Academy, for all officers who have been accepted for the Lubbock Police Department Academy from January 1, 1994 through the present date.

Please include all hiring criteria, including but not limited to actual scoring sheets and any notes and recommendations made by any hiring review panel.

Also, please include any tape recordings, video tapes, stenographer transcriptions, or other such recording item used to record any interview of potential officers.

2. Copies of all written documents indicating the standard for passing any and all tests for entrance into the academy including the B-PAD or other psychological exam, credit

history passing requirements and any test given in order to qualify for acceptance.

3. All records indicating the age, race and gender of each applicant excluded based, in any part, on the B-PAD exam or credit history.

The requestor has specifically excluded from the ambit of her request the name and social security number of the applicants. She specifies, however, that the age, race and gender of each applicant should be included. You contend that the requested information held by the Lubbock Police Academy (the "academy") is excepted from required public disclosure pursuant to, *inter alia*, sections 552.114 and 552.122 of the Government Code.¹

Section 552.114 of the Government Code excepts from required public disclosure "information in a student record at an *educational institution* funded wholly or partly by state revenue."² (Emphasis added.) In Open Records Decision No. 427 (1985), this office concluded that a police academy that receives state funding is an "educational institution" for purposes of the Open Records Act and that the records of police cadets attending such an academy constitute "student records" for purposes of the statutory predecessor of section 552.114. You have demonstrated to this office that the academy in fact receives state funding. We therefore conclude that the academy is an "educational institution" for purposes of section 552.114 of the Government Code.

The phrase "student record" in section 552.114 is not statutorily defined, but in Attorney General Opinion H-447 (1974) this office defined the phrase as follows:

[A] "student record" would generally include information concerning the student himself and his individual relationship to the educational institution. A list of student records would include, but not necessarily be limited to, the following: applications for admission, standardized achievement test scores, attendance data, scores on standardized intelligence, aptitude, and psychological tests, interest inventory results, health data, family background information, teacher or

¹This office has previously determined in Open Records Letter No. 97-1625 (1997) the extent to which the criteria used to satisfy B-PAD Video Assessment is subject to required public disclosure. The city should consider Open Records Letter No. 97-1625 as a "prior determination" for purposes of section 552.301 of the Government Code with regard to this aspect of the current request. Accordingly, we need not further address this particular issue here.

²Section 552.114(b) provides that an individual's student records must be released only to educational institution personnel, the student or the student's parent, legal guardian, or spouse, or a person conducting a child abuse investigation required under the Texas Family Code.

counselor ratings and observations, and reports of behavioral patterns or disciplinary actions.

Attorney General Opinion H-447 (1974) at 2. Based on the above description, we agree with your contention that to the extent the requestor seeks records specifically pertaining to police cadets attending the academy, such records constitute "student records" under section 552.114.

This office has generally treated "student record" information as the equivalent of "education record" information that is protected by FERPA. *See* Open Records Decision Nos. 539 (1990), 477 (1987), 332 (1982). Normally, information must be withheld from required public disclosure under FERPA and section 552.114 only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982); 206 (1978). In this instance, however, you inform us that the deletion of the cadets' names and social security numbers will not serve to protect the cadets' identities because

[c]lasses [at the academy] have ranged in size to as few as seven students. The last academy class, graduating in May 1998, included eight students. It would not be unusual for a class to include only one female, or only one person of a particular race. Because lists of the identity of students attending any particular academy class may be public information, merely deleting names and social security numbers from records that reveal the date or class of the subject, will not insure the requisite privileges and confidentiality interests of those persons.

Although you have not provided this office with the size of each of the academy's classes referenced in the open records request, we agree that, in the classes of the size you have described above, the cadets' right of confidentiality to their respective records would not be served by the mere redaction of their names and social security numbers. *Cf.* Open Records Decision No. 165 (1977). Assuming that the class size of all of the academy classes are approximately of the size you have described, we agree that those cadets' student records must be withheld in their entirety pursuant to section 552.114 of the Government Code.³

We now address whether the other requested documents are excepted from public disclosure. You contend that the city may withhold pursuant to section 552.122(b) of the

³In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

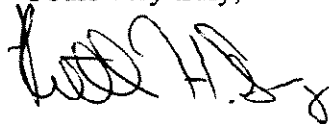
Government Code a document enclosed as part of Attachment 3 and entitled "Physical Ability Test." Section 552.112(b) excepts from required public disclosure "test item[s] developed by a . . . governmental body." Section 552.122(b) is applicable only where the test items constitute a "standard means by which an individual's or group's knowledge or ability in a particular area is evaluated;" the exception does not apply to evaluations of an employee's overall job performance or suitability. Open Records Decision No. 626 at 6 (1994). Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *Id.*

The document you seek to withhold merely describes four types of "events" that qualifying applicants must perform to determine overall physical ability to perform the duties of a police officer trainee. These descriptions do not constitute the physical tests themselves. Section 552.112(b) was not intended to protect this type of information. Accordingly, this document must be released.

You do not contend that any of the blank forms or other documents contained in Attachments 3 and 5 are excepted from public disclosure. We therefore conclude that Attachments 3 and 5, as submitted to this office, must be released in their entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/RWP/ch

Ref.:ID# 118167

Enclosures: Submitted documents

cc: Ms. Denette Vaughn
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(w/o enclosures)